reshaping of much of the system which they or their predecessors have helped to build up. When criticism of this character emanates from such sources we may expect radical changes in the effort to adapt the law to the new conception of its relation to society.

David Werner Amram.

IS A TAXICAB COMPANY A COMMON CARRIER?—A common carrier of passengers is one who undertakes for hire to carry all persons who may apply for such service.[1] It is not necessary that the carriage should be over a definite route nor at specified intervals. Thus, it has been held from an early period that hackmen are common carriers.[2] The undertaking to serve the public generally is evidenced by their occupying stands on the streets, by the display of signs, or by otherwise signifying a readiness to carry all who apply. Baggage transfer companies are likewise common carriers.[3]

In accordance with the above principles and by analogy to the case of hackmen and transfermen, it follows that taxicab companies are common carriers. This was so decided in two cases, one in Missouri[4] and the other in West Virginia,[5] where the question of the liability of the taxicab company was in issue. The West Virginia court thus described the position of the company: "Defendant followed the business of transporting persons for hire from one part of the city to another, and held itself out to serve one and all who should apply to it for transportation upon payment of the fares agreed upon and usually charged:—this being true, it is of course a public or common carrier of passengers." So far as the right to regulate the duties of a taxicab company are concerned, it was decided in a Supreme Court case[6] in New York that a municipal ordinance relative to public hackmen applies to taxicabs, it being well recognized in New York that hackmen who profess to serve the public generally are common carriers.

[1] Thompson, Carriers of Passengers, 26; Gillingham v. Ohio River R. Co., 35 W. Va. 588 (1891). This is in accord with the historic definition of a common carrier of goods: "Any one undertaking for hire to carry the goods of all persons indifferently is a common carrier." Gisbourn v. Hurst, 1 Salk. 249 (1710).

[2] "From time immemorial it has been held that the business of a public hackman is affected with a public interest and falls within the principle of the common law which was long ago asserted by Lord Chief Justice Hale in his treatise *De Portibus Maris.*" Seabury, J., in the Taxicab Cases, 143 N. Y. Sup. 279, 289 (1913). See also Munn v. Illinois, 94 U. S. 113, 125 (1876); Bonce v. Dubuque Street Ry. Co., 53 Iowa 278 (1880).

[3] Parmelee v. Lowitz, 74 Ill. 116 (1874). A moving van company has been held in Pennsylvania to be a common carrier. Lloyd v. Haugh, 223 Pa. 148 (1909).

[4] VanHoeffen v. Columbia Taxicab Co., 179 Mo. App. 561 (1913).

[5] Brown Shoe Co. v. Hardin, 87 S. E. 1014 (1916).

[6] The Taxicab Cases, 143 N. Y. Sup. 279 (1913).

In a recent case [7] in New York the question arose whether a taxicab company is a common carrier, so as to enable a person who was injured while riding in one of its cabs to obtain double indemnity from an accident insurance company under a policy which provided for the payment of such indemnity where "the bodily injury is sustained by the assured while in a public conveyance provided by a common carrier for passenger service." The plaintiff and a companion entered the taxicab at a street corner, where the company maintained a public stand and office. The trip was an ordinary one to another part of the city, and the injury occurred while the plaintiff was attempting to alight from the taxicab at his destination. The court decided that the taxicab company was not under the circumstances a common carrier, and that consequently the plaintiff was not entitled to recover double indemnity from the insurance company. This result was reached on the following grounds: (1) That the defendant company had the right to refuse carriage to "any objectionable person, because of condition, appearance, disease, or for any other proper or legal reason"; (2) that the taxicabs were not operated on any "defined or definite route"; (3) that the plaintiff and his companion had the exclusive right to occupy the taxicab until their destination was reached. The court cited in support of its decision a Tennessee case,[8] where a similar decision was handed down without an opinion, and a United States Supreme Court case,[9] where it was held that in so far as a taxicab company furnished cars from its central garage on orders, which it claimed the right to refuse, it was not a common carrier, such service being regarded as similar to that of a livery stable.

The reasons given and the authorities cited are not sufficient to support the decision in the New York case under discussion. The right to refuse persons who are objectionable because of disease or other legal reason is possessed by all common carriers.[10] The fact that the carriage is not over a definite route is not material, for, as already pointed out, this quality is present in the case of hacks and transfer companies. The assumption that the plaintiff had the right to occupy the vehicle exclusively is not determinative of the question. Mr. Justice Holmes in the United States case cited by the court regarded this right as consistent with the position of the company as a common carrier.[11] Furthermore, there seems to be no difference, so far as the right to exclusive occupancy is concerned, between taxicabs and hacks.

[7] Anderson v. Fidelity & Casualty Co. of N. Y., 166 N. Y. Sup. 640 (1917).

[8] Darnell v. Fidelity & Casualty Co., 46 Ins. L. J. 523 (1915).

[9] Terminal Taxicab Co., Inc., v. Kutz, 241 U. S. 252 (1915).

[10] Pullman Co. v. Krauss, 145 Ala. 395 (1906), (disease); Pittsburg, etc., R. Co. v. Van Dyne, 57 Ind. 576 (1877), (intoxication); Atchison, etc., R. Co. v. Weber, 33 Kan. 543 (1885), (violent conduct); Stevenson v. West Seattle Land Co., 22 Wash. 84 (1900), (obscene language).

[11] Terminal Taxicab Co., Inc., v. Kutz, 241 U. S. 252, 254 (1915).

The authorities relied upon by the court are of little weight—the Tennessee case, because the decision was accompanied by no opinion, and the United States case, because the situation there was different, as the cabs in question did not occupy public stands on the streets, but were obtained from the garage by order only.

A question somewhat similar to that of the New York case arose in a recent case in Pennsylvania.[12] Here the plaintiff, who was injured while riding in a taxicab was permitted to recover double indemnity under a policy, which stipulated that such indemnity should be paid when the injury occurred in "a public conveyance, provided for passenger service and propelled by steam, gasoline, *etc.*" This statute differs from the one in the New York case in not specifying that the "public conveyance" is to be provided by a "common carrier." This difference, however, is more apparent than real, for it would seem to follow on principle that a company operating a public conveyance was in that connection a common carrier. Although it is not clear from the opinion whether the court considered that the plaintiff and his party had the right to occupy the taxicab exclusively,[13] their reasoning appears to be broad enough to cover the facts of the New York case, and they probably would have decided that the defendant company in that case was a common carrier.

Both on principle and by analogy to hack and transfer companies, taxicab companies occupying public stands on the streets or otherwise holding themselves out to serve the public should be held to be common carriers for all purposes.

Edwin R. Keedy.

TORTS—CONTRIBUTORY NEGLIGENCE—"LAST CLEAR CHANCE"—In practically every common law jurisdiction it is held as a general proposition of law that the contributory negligence of the plaintiff destroys his right to recover from an equally negligent defendant, or at least operates to reduce the damages which should be awarded to him, but in practically every common law jurisdiction it is equally true that the plaintiff by his pure negligence, exposing himself to the risk of the injury, does not forfeit under all circumstances his right to damages for the injuries caused him by another. It is uni-

[12] Primrose v. Casualty Co. of America, 232 Pa. 210 (1911).

[13] Two statements of the court on this point are apparently conflicting: (1) "Those who rode in them . . . were as much passengers in them as they would have been if riding in a specially chartered car of a railroad company from which all but themselves were excluded." (2) "The use of no one of its machines was limited to any particular person, but anyone able to pay the price for riding in it, while it was under the control of and being operated by one of the company's employees, could do so."